

### **REMARKS**

Claims 1, 2, 7 and 21 are presented for consideration. Claims 3-6, 8-12 and 22-29 are pending but withdrawn from consideration following a restriction requirement.

Claim 1 is amended to more distinctly describe the subject matter of applicant's invention. No new matter is added by these amendments and the amendments are not intended to affect the scope of the claims.

#### **A. Rejection under 35 U.S.C. 112**

Claims 1, 2, 7 and 21 were rejected under 35 U.S.C. 112 based on the use of the terms "nanocomposite" and "quantum confined".

Although the office action stated are rejection based upon the use of the word "comprising" in claim 7, it is believed that the rejection was intended to apply to claim 1. Accordingly, claim 1 is amended to more clearly state that the device comprises at least one layer that is constructed from powder.

#### **B. Obviousness-type Double Patenting.**

A terminal disclaimer over U.S. Patents 5,952,040, 5,905,000 and 6,228,904 accompanies this response. It is respectfully requested that the obviousness type double patenting rejection of claim 1 be withdrawn.

#### **C. Rejection of Claim 1 under 35 USC 102(f)**

Claim 1 was rejected under 35 U.S.C. 102(f) based upon the commonly owned U.S. Patents 5,952,040, 5,905,000 and 6,228,904. A declaration under 37 C.F.R. 1.132 affirming that Dr. Tapeshe Yadav, who is identified as an inventor on both U.S. Patents 5,952,040, 5,905,000 and 6,228,904 and the instant application, is the inventor of the subject matter of claim 1. This declaration is believed to overcome the rejection under 35 USC

102(f).

**D. Rejection of Claim 1 under 35 USC 102(e)**

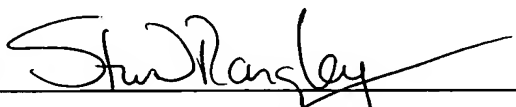
Claim 1 was rejected under 35 U.S.C. 102(e) based upon the commonly owned U.S. Patents 5,952,040, 5,905,000 and 6,228,904. The declaration under 37 C.F.R. 1.132 is believed to overcome the rejections under 35 USC 102(e).

**E. Conclusion**

In view of the above, claims 1, 2, 7 and 21 are believed to be allowable and the case in condition for allowance which action is respectfully requested. The references that were cited but not relied upon are no more relevant than those references that were relied upon. No fee is believed to be required by this response as determined on the accompanying transmittal letter. Should any other fee be required, please charge Deposit 50-1123. Should any extension of time be required please consider this a petition therefore and charge the required fee to Deposit Account 50-1123

Respectfully submitted,

Date: January 21, 2004

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PATENT APPLICATION  
Attorney Docket No.: A21 (A8DIV2)  
Client/Matter No.: 80741.0006.002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 10/001,423 Application of: YADAV et al. Filed: December 3, 2001 Art Unit: 2856 Examiner: R. RAEVIS Attorney Docket No. A21 (A8DIV2) For: <b>NANOCOMPOSITE DEVICES AND RELATED NANOTECHNOLOGY</b>	Confirmation No.: 4189 Customer No.: <b>25235</b>  RECEIVED JAN 29 2004 TECHNOLOGY CENTER 2800
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**RULE 132 DECLARATION OF Dr. Tapesb Yadav**

I, Dr. Tapesb Yadav, declare:

1. My name is Tapesb Yadav, and I reside at 8724 Skyland Drive, Longmont, Colorado.
2. All of my statements in this Declaration are accurate and true to the best of my knowledge and belief.
3. I graduated from the Massachusetts Institute of Technology where I completed a Ph.D. in Chemical Engineering.
4. I am the Founder and currently the Chairman and Chief Executive Officer of NanoProducts Corporation having a business address of 14330 Longs Peak Court, Longmont, Colorado, a company that specializes in producing complex compositions that are expensive and difficult if not impossible to produce by other techniques.

5. I am responsible for research activities at NanoProducts Corporation related to the production and use of nanostructured powders, and have been responsible for this area of research since the company was founded in 1994.

6. I am a co-inventor of U.S. Patent Application No. 10/001,423 filed December 3, 2001. I believe I am the sole inventor of the subject matter of claim 1.

7. I am a co-inventor of U.S. Patent 5,952,040 which has been relied on to reject the claims of U.S. Patent Application No. 10/001,423 under 35 U.S.C. 102(e), 35 U.S.C. 102(f), and obviousness type double patenting.

8. To the extent that subject matter that is disclosed but not claimed in U.S. Patent 5,952,040 relates to claim 1 of U.S. Patent Application No. 10/001,423, I am the sole inventor and the disclosure in U.S. Patent 5,952,040 is derived from me.

9. I am a co-inventor of U.S. Patent 5,905,000 which has been relied on to reject the claims of U.S. Patent Application No. 10/001,423 under 35 U.S.C. 102(e), 35 U.S.C. 102(f), and obviousness type double patenting.

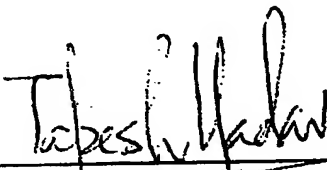
10. To the extent that subject matter that is disclosed but not claimed in U.S. Patent 5,905,000 relates to claim 1 of U.S. Patent Application No. 10/001,423, I am the sole inventor and the disclosure in U.S. Patent 5,905,000 is derived from me.

11. I am a co-inventor of U.S. Patent 6,228,904 which has been relied on to reject the claims of U.S. Patent Application No. 10/001,423 under 35 U.S.C. 102(e), 35 U.S.C. 102(f), and obviousness type double patenting.

12. To the extent that subject matter that is disclosed but not claimed in U.S. Patent 6,228,904 relates to claim 1 of U.S. Patent Application No. 10/001,423, I am the sole inventor and the disclosure in U.S. Patent 6,228,904 is derived from me.

13. U.S. Patents 5,952,040, 5,905,000 and 6,228,904 are all currently assigned to and have at all times been commonly assigned to the Assignee of U.S. Patent Application No. 10/001,423. The current assignee is NanoProducts Corporation of Longmont, Colorado.

14. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
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Tapesh Yadav